

10049

VOLUNTARY AGREEMENT

THIS VOLUNTARY AGREEMENT ("Agreement") made this 27th day of February 2002, by and between Fairway Market ("Applicant") and Advisory Neighborhood Commission ("ANC 5C") ("Protestant");

WITNESSETH

WHEREAS, Applicant has applied for renewal of its retailer's license Class B for premises located at 2501 North Capitol Street, NE, Washington, D.C.;

WHEREAS Protestant has protested the renewal of Applicant's license; and

WHEREAS, the parties have agreed to enter into this Agreement and to request the Alcohol Beverage Control Board to approve the Applicant's application conditioned upon Applicant's compliance with the terms of this written Agreement.

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants and conditions set forth below, the parties agree as follows:

1. **Recitals Incorporated.** The recitals set forth above are incorporated herein by reference.

2. **Compliance With Law.** Applicant shall comply with all laws and regulations governing the operation of the market, including laws and regulations governing the Class B license to which this agreement applies, as applied for and approved by the District of Columbia in the name of Applicant.

3. **Conduct of Business Operations.**

A. **Cleanliness of Premises and Business Environment.** Applicant shall take all reasonable measures to assure that the immediate environs of the establishment are kept free of litter and debris. "Immediate environs" is defined in D.C.M.R. § 720.2 as including: "all property on which the premises are located; all property used by the licensee to conduct its business, whether part of the premises or not, including parking lots and the portion of alleys, sidewalks, or other public property immediately adjacent to the premises or adjacent to the property used by the licensee to conduct its business." Applicant shall clean the sidewalk in front of its premises up to

and including the curb, and remove trash from the alley behind the premises, by 10:00 a.m. and once again within one hour before closing on days the establishment is open. Applicant shall maintain trash, garbage and recycling material storage facilities in which all containers have lids which are kept securely closed at all times, which containers shall be sufficient to contain all trash, garbage and recycle materials generated by the establishment, and to assure that trash, garbage, and recycle materials are removed regularly.

B. Loitering. The parties recognize that loitering in and around the establishment has been a significant problem in the past, and that the peace, order and quiet of the neighborhood will continue to be unreasonably affected if it is not reasonably controlled in the future. Applicant shall take all reasonable measures to discourage loitering within, in front and in the rear of the establishment. The applicant shall maintain in good operating condition the currently installed video camera focused on the front exterior of the establishment as a deterrent to loitering. At the request of the Protestant or the Metropolitan Police, applicant shall tape activity in its front and provide a copy of such tape to the requesting party. No public pay telephones may be connected to the exterior or outside of above referenced establishment.

C. Alcohol Abuse Prevention. Applicant shall not, directly or indirectly, knowingly sell or deliver alcoholic beverages to any intoxicated person, or to any person of intemperate habits, or to any person who appears to be intoxicated, and will cooperate with the Metropolitan Police and health and social service agencies to identify such persons. A person of intemperate habits shall be defined as any person arrested or cited for alcohol-related offenses by the Metropolitan Police for any alcohol-related crime three times or more in any one year and who has been so identified to Applicant by the Metropolitan Police Department by giving a photo and name to Applicant. Applicant shall not sell or deliver alcoholic beverages to anyone accompanying a person who has been denied service if there is an apparent attempt to deliver the alcoholic beverage to the person who has been denied service. Applicant shall not sell or deliver alcoholic beverages to any person or persons under the age of 21, and will prominently display the fact that such sales are prohibited and that patrons are subject to being asked to produce valid proof of age. These specific sale restrictions shall be posted on signs in the establishment.

D. Renovation and Signage at Premises. Applicant shall paint the metal screening on two small windows, located on the right side of the establishment, to match the color of the building. Applicant shall remove and not install signs advertising alcoholic beverages or cigarettes on the front window so as to obstruct visibility into the establishment. Applicant shall not advertise alcoholic beverages or cigarettes on the exterior walls of the establishment. Applicant shall repaint the storefront to a non-high gloss neutral color with appropriate trimming as necessary due to wear and discoloration of present exterior paint. Applicant shall generally maintain the property in commercially reasonable condition and promptly remove or paint over any graffiti written on the exterior walls of the establishment.

3. **Limitation on Non-Alcohol Retail Items.** Applicant shall not provide "go-cups" (as defined in DCMR § 709.7) to customers. Applicant may sell disposable cups to customers provided such cups are in pre-packaged containing no less than 12 cups. Applicant shall only sell or provide ice to customers in pre-packaged forms containing no less than 5 pounds. Applicant shall not sell single cigarettes, plastic bags smaller than sandwich size or in non-pre-packaged form, or any other form of drug paraphernalia.

4. **Cooperation with Community.** Applicant shall reasonably cooperate with Protestant in efforts to alleviate alcohol abuse problems, illegal drug activity and loitering by, among other things, participating in community meetings and programs as the circumstances may warrant. Applicant shall reasonably cooperate with Protestant to improve the overall environment in an immediately around the establishment to make it a more pleasant, safe area for residents, customers and businesses.

5. **Restriction on Hours of Alcoholic Beverage Sales.** Applicant shall sell alcoholic beverages only between the hours of 9:00 a.m. and 10:00 p.m.

6. **Participation in ANC Meetings.** In order to maintain an open dialogue with the community and cooperatively address and control any problems associated with its operations, Applicant, upon reasonable notice from the ANC, shall send a representative of the establishment to a meeting(s) of the ANC to discuss and find ways to reasonably resolve such problems.

7. **License Ownership.** Applicant agrees to abide by all ABC regulations regarding the ownership and transfer of the license including, without limitation, providing legal notice of any proposed transfer or substantial change in operations to the Advisory Neighborhood Commission.

8. **Binding Effect.** This Voluntary Agreement shall be binding upon and enforceable against the successors and assigns of Applicant.

9. **Notices.** In the event of a violation of the provisions of this Voluntary Agreement, Applicant shall be notified in writing by the person alleging such violation and given an opportunity to cure such violation within thirty (30) days thereafter before action against Applicant on the basis of such violation may be undertaken. A material violation of this Agreement or its ABC license by Applicant which has not been corrected after such thirty (30) days' notice shall constitute cause for seeking a Show Cause Order from the ABC Board. Any notices required to be made under this Agreement shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, or hand-delivered, to the other parties to this Agreement. Notice is deemed to be received upon mailing. Notice is to be given as follows:

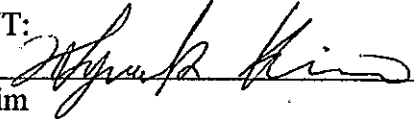
- (a) If to Applicant, to:
Hyun Ok Kim
T/a Fairway Market
2501 North Capitol Street, NE
Washington, DC
- (b) If to ANC 5C, Care of:
James D. Berry, Jr., Chairman
680 Rhode Island Avenue, NE, Suite H-4
Washington, DC 20002

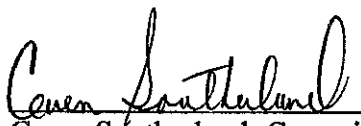
Applicant may change the notice addresses listed above by written notice to the signatories hereto at the addresses listed below their signatures. Failure to give notice shall not constitute waiver or acquiescence to the violation, but notice shall be a prerequisite to the filing of a complaint with the Alcohol Beverage Control Board.

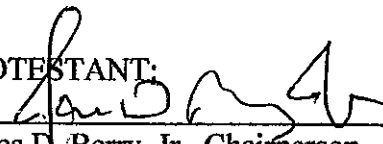
10. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

WITNESS:

APPLICANT:
By: 
Hyun Ok Kim
Fairway Market, 2501 North Capitol Street, NE
Washington, DC 20002
Date: 4/12/02


Gwen Southerland, Commissioner
ANC 5C05
Date: 3/19/02

PROTESTANT:
By: 
James D. Berry, Jr., Chairperson
Advisory Neighborhood Commission 5C
680 Rhode Island Avenue, NE
Washington, DC 20002
Date: 3/19/2002

**BEFORE
THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:

Hyun Ok Kim
t/a Fairway Market

Application for a Retailer's Class
B (renewal)
at premises
2501 North Capitol Street, N.W.
Washington, D.C.

Case no. 10049-02/009P
2002-103

James D. Berry, Jr., Chairperson, Advisory Neighborhood Commission 5C, Protestant

Hyun Ok Kim, Applicant

BEFORE: Roderic L. Woodson, Esquire, Chair
Vera Abbott, Member
Charles Burger, Member
Laurie Collins, Member
Judy A. Moy, Member
Ellen Oppen-Weiner, Esquire, Member
Audrey E. Thompson, Member

ORDER ON WITHDRAWN PROTEST AND VOLUNTARY AGREEMENT

The application, having been protested, came before the Board on January 30, 2002, in accordance with D.C. Official Code Section 25-601 (2000 Edition). James D. Berry, Jr., Chair, on behalf of the Advisory Neighborhood Commission 5C, filed opposition in a timely manner.

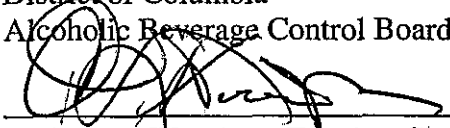
The official records of the Board reflect that the parties have reached an agreement that has been reduced to writing and has been properly executed and filed with the Board. Pursuant to the agreement, dated February 27, 2002, the protestant has agreed to withdraw the opposition, provided, however, the Board's approval of the pending application is conditioned upon the licensee's continuing compliance with the terms of the agreement.

Hyun Ok Kim
t/a Fairway Market
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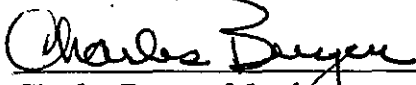
Accordingly, it is this 19th day of June 2002, **ORDERED** that:

1. The opposition of James D. Berry, Jr., Chair, on behalf of the Advisory Neighborhood Commission 5C, is **WITHDRAWN**;
2. The application of Hyun Ok Kim t/a Fairway Market for a retailer's class CR (renewal) license located at 2501 North Capitol Street, N.E., Washington, D.C. is **GRANTED**;
3. The above-referenced agreement between the parties, is **INCORPORATED** as part of this Order; and
4. Copies of this Order shall be sent to the Protestant and the Applicant.


District of Columbia
Alcoholic Beverage Control Board


Roderic L. Woodson, Esquire, Chair

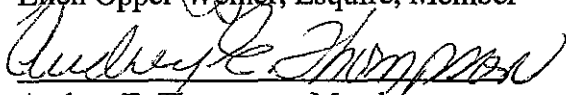

Vera Abbott, Member


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Laurie Collins, Member


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Ellen Opper-Weiner, Esquire, Member


Audrey E. Thompson, Member